

Maple View Manor, Inc. and New England Health Care Employees Union, District 1199, AFL-CIO. Case 34-CA-7300

April 17, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

Upon a charge filed on November 9, 1995, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing on January 22, 1996, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain and to furnish necessary and relevant information following the Union's certification in Case 34-RC-1330. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an amended answer admitting in part and denying in part the allegations in the complaint, and alleging an affirmative defense.

On March 1, 1996, the General Counsel filed a Motion for Summary Judgment with the Board. On March 5, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On March 25, 1996, the Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its amended answer the Respondent denies various allegations, and asserts as an affirmative defense that the Union's certification was improper because there was a valid collective-bargaining agreement between the Respondent and another union at the time the Union filed its representation petition.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that the Respondent's various denials in its amended answer do not raise any issue warranting a hearing. The Respondent's amended answer denies that the Union is a labor organization, that the

Union was certified on June 22, 1995, and has at all times since that date been the exclusive bargaining representative of the unit, that the Respondent has refused to bargain with the Union since about October 5, 1995, and that the information requested by the Union is necessary and relevant.

The Board, however, has previously found the Union to be a labor organization. See, e.g., *Mediplex of Wethersfield*, 320 NLRB No. 35 (Dec. 22, 1995); and *Windsor Castle Health Care Facilities, Inc.*, 314 NLRB 1270 (1994). Moreover, the Respondent failed to raise any question as to the Union's labor-organization status in the representation proceeding. Accordingly, the Respondent is precluded from now doing so in the instant proceeding. See *Flatbush Manor Care Center*, 314 NLRB 702 fn. 2 (1994).

With respect to the allegations relating to the Union's certification as the exclusive bargaining representative, the record from the underlying representation proceeding and the exhibits attached to the General Counsel's motion clearly establish that the Union was so certified on June 21, 1995. A hearing with respect to those allegations is therefore clearly unwarranted.¹

With respect to the Respondent's alleged refusal to bargain, nowhere in its answer or response to the Notice to Show Cause does the Respondent contend that it has offered or agreed to bargain with the Union in response to the Union's October 5 and November 14, 1995 letters requesting bargaining and information. Further, the Respondent's amended answer admits that the Respondent has refused to provide the requested information to the Union, and asserts as an affirmative defense to the complaint allegations that the Union's certification was improper. In these circumstances, we find that the Respondent is in fact refusing to recognize and bargain with the Union as alleged. See, e.g., *Indeck Energy Services of Turner Falls, Inc.*, 318 NLRB No. 34 (Aug. 15, 1995).

Finally, we find that there are also no factual issues warranting a hearing regarding the Union's request for information. The complaint alleges that by letter dated October 5, 1995, the Union requested the following information from the Respondent:

1. A list of all employees in the bargaining unit, alphabetically by Job Classification, including address, telephone number, social security number, date of birth, date of hire, wage rate, and hours worked per week;
2. Wage scales for each Job Classification;
3. All benefit plans offered (health, life, tuition, etc.), terms of eligibility and their costs to both Maple View Manor and the employee;

¹ Although the complaint alleges that the Union was certified on June 22, rather than June 21, 1995, this was apparently inadvertent and has been corrected in our decision.

4. If Maple View Manor provides a pension, give the total assets of the fund, all actuarial information and summary plan descriptions;

5. Copy of the Personnel Policy/Policy Manual; and

6. Any and all other terms and/or conditions that affect employment.

The complaint alleges that by letter dated November 14, 1995, the Union also requested the following information from the Respondent:

1. List of current employees, including their names, dates of hire, current rates of pay, job classifications, last known addresses, telephone numbers and social security numbers;

2. By employee, a breakdown of all benefits currently received, as well as any pay received as compensation for full or partial waiver of benefits;

3. By employee, a breakdown of wage history, including the amounts and dates of wage increases received since date of hire;

4. By job title, a list of minimum probationary and post-probationary pay rates;

5. Copies of all current job descriptions with their dates of implementation;

6. Copies of all current company personnel policies, practices or procedures;

7. Copies of all benefit plans offered by, or in effect at, the facility, including by [but] not limited to health insurance, dental insurance, vision care insurance, retirement, long-term disability, short-term disability, life insurance, and tuition assistance, and to the extent that it is not apparent from information requested in item two above, a breakdown of which employees participate in each of these plans;

8. For any retirement plan provided, copy of most recent actuarial reports and total assets of plan;

9. By participant and in total, the cost to the employer and to employees of each benefit plan provided, including but not limited to health insurance, long-term disability; short term disability, life insurance, dental insurance, vision care insurance, retirement, and tuition assistance;

10. By employee, a list of paid time off accrual rates and current number of hours in the paid time off bank;

11. Copies of all evaluations of current employees issued during the last three years along with merit pay raises that resulted from said evaluations;

12. Copies of all disciplinary notices, warnings or suspension notices issued to employees during the last three years, along with a list of any em-

ployees terminated, with reasons for their terminations during the last three years;

13. The name, address and contact person for the current workers' compensation carrier;

14. A list of all inservices provided during the last twelve months, along with lists of the employees who attended each inservice;

15. A copy of all facility procedures concerning lifting of patients or heavy objects, and a listing of any and all mechanical apparatuses used to assist in lifting, including manufacturer, model number, and date of purchase;

16. A breakdown of current, normal staffing patterns for the facility, by department, job title, shift, floor, weekday and holiday, and if this breakdown has changed during the last twelve months, a comparable breakdown of the previous staffing pattern;

17. Information indicating the number of employees who actually worked (as opposed to normal scheduling) each day for the last year, broken down by department, job title, shift and floor;

18. By employee, a breakdown of guaranteed hours "on the books" and hours actually worked, including overtime, for each pay period in the last year;

19. A breakdown of current patients by acuity level, using whatever classification system is in effect at the facility (i.e. "total care," "assists," "independents") for current facility population, as well as the facility population one year ago and two years ago;

20. Copy of facility's dress code policy;

21. Copy of any company policies or procedures with respect to drug or alcohol abuse;

22. Copy of any company policy regarding light duty, differentiated, if appropriate between employees disabled at work, employees temporarily disabled outside of work, and permanently disabled employees;

23. A list of all employees who have worked in a light duty capacity during the last years, with dates, medical restrictions and light duty job descriptions, and a comparable breakdown of any jobs that have been modified in order to accommodate any employee's permanent disability during the last three years;

24. Copies of any charges filed with any state or federal agency alleging sexual harassment or discrimination on the basis of physical disability, mental disability, race, religion, gender, sexual preference, or age;

25. Copies of logs or files of all complaints made by employees, residents, or family members concerning supplies shortages or deficiencies, equipment problems, or physical plant repair

needs during the last three years, along with a description of any action taken by the company to remedy each complaint;

26. Membership of the facility's safety committee, along with dates and minutes of all meetings held during the last three years; and

27. Copies of any company policies concerning leaves of absence for employee illness, family illness, maternity/paternity, educational or other reasons, along with a listing of all employees who have taken leaves of absence or been denied leaves of absence during the last three years, the reasons for said leave requests, and the dates of any leaves granted.

It is well established that, with the exception of employee social security numbers and copies of any sexual harassment or discrimination charges filed against the Company,² such information is presumptively relevant for purposes of collective bargaining and must be furnished on request.

Accordingly, we grant the Motion for Summary Judgment and will order the Respondent to bargain and to furnish the requested information with the exception of employee social security numbers and copies of any sexual harassment or discrimination charges that may have been filed against the Company.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Connecticut corporation with an office and principle place of business in Rocky Hill, Connecticut, has been engaged as a health care institution in the operation of a nursing home providing inpatient medical and professional care services for the elderly and infirm.

During the 12-month period ending December 31, 1995, the Respondent, in conducting its business operations, derived gross revenues in excess of \$100,000 and purchased and received at its facility goods valued in excess of \$5000 directly from points outside the State of Connecticut. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and a health

care institution within the meaning of Section 2(14) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held June 2, 1995, the Union was certified on June 21, 1995, as the collective-bargaining representative of the employees in the following appropriate unit:

All full time and regular part time service and maintenance employees employed by the Respondent; but excluding all clerical employees, and guards, professional employees, and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

About October 5 and November 14, 1995, the Union, by letter, requested the Respondent to bargain and to furnish information, and since about the same dates the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

By refusing on and after October 5 and November 14, 1995, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested, with the exception of employee social security numbers and copies of any sexual harassment or discrimination charges that may have been filed against the Company.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enf'd. 328

²The Board has held that employee social security numbers and any charges and complaints filed against a company are not presumptively relevant and that the union must therefore demonstrate the relevance of such information. See *Heartland of Martinsburg*, 318 NLRB No. 10 (July 31, 1995); and *Polymers, Inc.*, 319 NLRB No. 7 (Sept. 20, 1995), and cases cited therein. Here, the Union did not specify in its request why it wanted such information or otherwise demonstrate the relevance of the information. This does not excuse, however, the Respondent's failure to supply all of the other information requested by the Union. Such information clearly is presumptively relevant and the Respondent's failure to provide the information on request violated Section 8(a)(5) of the Act. See *id.*

F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enf. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Maple View Manor, Inc., Rocky Hill, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with New England Health Care Employees Union, District 1199, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full time and regular part time service and maintenance employees employed by the Respondent; but excluding all clerical employees, and guards, professional employees, and supervisors as defined in the Act.

(b) Furnish the Union the information that it requested on October 5 and November 14, 1995, with the exception of employee social security numbers and copies of any sexual harassment or discrimination charges that may have been filed against the Company.

(c) Post at its facility in Rocky Hill, Connecticut, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 34 after being signed by the

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with New England Health Care Employees Union, District 1199, AFL-CIO, as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full time and regular part time service and maintenance employees employed by us; but excluding all clerical employees, and guards, professional employees, and supervisors as defined in the Act.

WE WILL furnish the Union the information that it requested on October 5 and November 14, 1995 with the exception of employee social security numbers and copies of any sexual harassment and discrimination charges that may have been filed against the Company.

MAPLE VIEW MANOR, INC.